THE NAVAJO-HOPI RELOCATION HOUSING PROGRAM ACT

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 52, S. 349, the Navajo-Hopi Relocation Housing bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 349) to reauthorize appropriations for the Navajo-Hopi Relocation Housing Program.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the bill be deemed read for a third time, passed, and the motion to reconsider be laid upon the table; and that any statements relating to the bill be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (S. 349) was deemed read for a third time, and passed, as follows:

S. 349

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REAUTHORIZATION OF APPROPRIATIONS FOR THE NAVAJO-HOPI RELOCATION HOUSING PROGRAM.

Section 25(a)(8) of Public Law 93–531 (25 U.S.C. 640d–24(a)(8)) is amended by striking ''1989,'' and all that follows through ''and 1995.'' and inserting ''1995, 1996, and 1997.''.

TRIPLOID GRASS CARP INSPECTION FEE COLLECTION ACT

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 73, S. 268.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 268) to authorize the collection of fees for expenses for triploid grass carp certification inspections, and for other purposes.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the bill be deemed read for a third time, passed, and the motion to reconsider be laid upon the table; and that any statements relating to the bill be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (S. 268) was deemed read for a third time, and passed, as follows:

S. 268

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. COLLECTION OF FEES FOR TRIPLOID GRASS CARP CERTIFICATION INSPECTIONS.

(a) IN GENERAL.—The Secretary of the Interior, acting through the Director of the Fish and Wildlife Service (referred to in this section as the ''Director''), may charge reasonable fees for expenses to the Federal Government for triploid grass carp certification inspections requested by a person who owns or operates an aquaculture facility.

(b) AVAILABILITY.—All fees collected under subsection (a) shall be available to the Director until expended, without further appropriations.

(c) USE.—The Director shall use all fees collected under subsection (a) to carry out the activies referred to in subsection (a).

INDIAN CHILD PROTECTION REAUTHORIZATION ACT

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Order No. 75, S. 441.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 441) to reauthorize appropriations for certain programs under the Indian Child Protection and Family Violence Prevention Act, and for other purposes.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the bill be deemed read for a third time, passed, and the motion to reconsider be laid upon the table; and that any statements relating to the bill be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (S. 441) was deemed read for a third time, and passed, as follows:

S. 441

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REAUTHORIZATION OF PROGRAMS.

Sections 409(e), 410(h), and 411(i) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3208(e), 3209(h), 3210(i), respectively) are each amended by striking ''and 1995'' and inserting 1995, 1996, and 1997''.

RELATIVE TO THE DEATH OF THE HONORABLE JOHN C. STENNIS

Mr. SANTORUM. Mr. President I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 111, submitted earlier today by Senators DOLE, DASCHLE, COCHRAN, and LOTT.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 111) relative to the death of the Honorable John C. Stennis, late a Senator from the State of Mississippi.

The Senate proceeded to consider the resolution.

The PRESIDING OFFICER. Without objection, the resolution is considered and agreed to.

So the resolution (S. Res. 111) was agreed to, as follows:

S. RES. 111

Resolved, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable John C. Stennis, late a Senator from the State of Mississippi.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

Resolved, That when the Senate recesses today, it recess as a further mark of respect to the memory of the deceased Senator.

Mr. SANTORUM. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. SMITH). The Senator from Illinois.

PRODUCT LIABILITY FAIRNESS ACT

Ms. MOSELEY-BRAUN. Mr. President, I would like to speak for a few moments about product liability reform. The bill the Senate is now considering, the Product Liability Fairness Act of 1995, would establish national standard to be applied by State and Federal courts in product liability lawsuits. Let me say at the outset that I do believe some national product liability standards are needed, for reasons I will outline below.

This consept—the concept of Federal product liability standards—is not entirely new to Congress; one version or another of the legislation has been pending before this body for the past 15 years. In past years the majority of the product liability debate has focused on whether the Federal Government should get involved in this area, rather than on what the Federal standards should be. This focus has, in my opinion, been unfortunate.

I believe the Senate must begin to focus on the issue of what standards should apply to product liability cases. Indeed, I stood on the Senate floor after the product liability bill failed last year, stating my intention not to filibuster this bill again, and stating my desire to debate what alterations the Federal Government should make in the area of product liability law.

That is not to imply that determining Federal product liability standards will be easy. It is often said when considering difficult legislation that ''The devil is in the details.'' This is one vote where the details really do matter. Any bill passed by the Senate must be fair not only to the manufacturers who place products on the market; it must also be fair to the workers who help build those products, and to the consumers who purchase them.

The nature of the American marketplace has changed; commerce is no longer local, but is national and international in scope. American manufacturers ship their goods throughout the 50 States and beyond; this is true not only of our biggest companies, like Motorola, but of small businesses like Rockwell Graphic Systems in Westmont, IL, or Oxy Dry Corp. in Itasca, IL.

Given the increasingly global nature of the marketplace, I believe it makes sense to have some basic, national

product liability standards that apply across the board. In the absence of uniform standards, companies find themselves being sued in one State for conduct that would not be actionable in another. In States without a statute of repose, for example, companies are forced to defend lawsuits for products that are 50 or 60 years old, while other States limit the right to sue on those products after 15 or 20 years. In States with vicarious liability statutes, companies that rent or lease products may find themselves sued for actions over which they had no control—while in States without vicarious liability, such suits cannot go forward.

Holding manufacturers accountable to 50 different standards in 50 different States may have been justified when products were shipped down the street to be sold in the corner grocery store; it does not make sense when products are shipped for sale throughout the 50 States. The Constitution of the United States, in article 1, section 8, grants Congress the power to regulate interstate commerce. Enactment of product liability legislation is nothing more than a valid and necessary exercise of this constitutional power.

Nor does establishing different standards in different States benefit consumers. There is no reason why a consmer in Massachusetts or Arizona should have greater or lesser rights than a consumer in Illinois. All consumers should have the same ability to access the courts. The bill introduced by Senators ROCKEFELLER and GORTON is not perfect in this regard, as I will discuss. But it is a good beginning, and it does, at long last, allow the U.S. Senate to address the product liability issue. I would like at this time to congratulate Senator ROCKEFELLER, who recognized years ago that product liability was an issue the U.S. Senate had to address. He has worked tirelessly to craft legislation that strikes an appropriate balance between preserving access to the courts on the one hand, and providing a measure of certainty and predictability to manufacturers on the other. We owe him a debt of gratitude.

Mr. President, I know that Senators on both sides of this issue point to numerous studies which purport to prove their support or opposition to this legislation. Supporters of the bill cite studies which conclude that product liability reform will spur job creation. Opponents of the bill, conversely, cite studies which conclude that product liability reform will have no effect on job creation. Supporters of the bill cite studies to show that product liability reform will result in lower prices to consumers, while opponents cite studies that show the bill will have no effect on consumer prices. I have considered all these studies, and I do not believe that the benefits of product liability reform can be proven with studies or statistics.

That is not to say, however, that this bill will not make a difference. Based on countless conversations members of my staff and I have had with Illinois manufacturers, with Illinois small business men and women, and with major Illinois corporations, I am convinced that the bill being debated by the Senate will help give employers a level of certainty, a level of predictability, and will create jobs. As one example, consider the statute of repose. I have talked to manufacturers who have been sued in the 1980's for products their company manufactured in the 1920's. The fact that a manufacturer can be sued in 1995 for a piece of machinery that was manufactured 50, 75, even 100 years ago, creates a substantial disincentive for manufacturers to create quality products that will stand the test of time. If American manufacturers do not create quality products, American workers don't work. The U.S. Senate should not be perpetuating a system that acts as a disincentive to the manufacturing of quality products; the statue of repose in S. 565 will help ensure that we do not.

In addition, I think it is important to keep in mind that no individual has just one role in this debate, Consumers are not just consumers, they are also workers whose ability to find a job may hinge on how many products are manufactured in this country. They are also small business men and women, whose ability to keep their firms afloat and meet their payroll may hinge on the amount of money they have to spend on product liability insurance. They are retirees, whose pensions are dependent on the solvency of their former employers.

That being said, it is also true that establishing Federal standards for tort liability represents a fundamental change in the structure of the product liability system, one that Congress must consider very carefully. I am pleased that our focus today is not limited to whether the Federal Government should be involved in product liability reform; instead, we are finally addressing what standards are necessary and appropriate to apply in product liability actions. Those standards must, however, be evaluated carefully. The Federal Government must strike an appropriate balance between the right of consumers to access the courts for legitimate lawsuits, and the need for employers and manufacturers to have some predictability about the standards by which their products will be judged. The Federal Government must strike a balance that prevents manufacturers from placing dangerous products on the market, but that also encourages manufacturers to develop new products that could save lives. This is not an all-or-nothing debate. We can craft a bill that is fair to everyone.

Mr. President, much of the debate that has swirled around S. 565 has focused on provisions that are not included in the Senate bill, but were instead passed by the House of Representatives. As you know, the House recently passed a series of bills designed to reform the civil justice system. A number of Senators have taken to the floor to criticize provisions in the House legislation that are grossly unfair to consumers, and would limit the right of ordinary Americans to access the courts. I too would like to address those provisions at this time, in the hopes that the U.S. Senate will reject them; if it does not, I will be forced to vote against a product liability bill that I want to support.

First and foremost, I cannot support legislation that imposes any form of a loser pays, or English rule system in the U.S. courts. I firmly believe that loser pays provisions run counter to the most fundamental notion of American jurisprudence, namely, that our courts serve all our citizens, not merely the rich and powerful. Loser pays provisions seriously undermine our efforts to open the courts to all Americans, regardless of income level. Instead, loser pays guarantees a system of justice where the most important factor is wealth. I cannot think of anything more un-American than charging an entry fee at the courthouse door. For that is what loser pays provisions do—if they are enacted, access to the courts will be determined not by who is right and who is wrong, but will be determined by how much an individual makes. Americans can and should be proud of the fact that, under the American legal system, all individuals have access to the courts. In America, the poorest worker who has been wronged by the richest corporation can go to court, can prove the corporation was wrong, and can get justice. But if the English rule is adopted, that situation will change. Even those individuals with meritorious claims cannot afford the risk of paying not only their own legal fees, but those of the defendant as well. As a result, only those with enough financial security to risk paying for their own legal fees and those of the defendant—a very small segment of the population indeed—would have the ''luxury'' of pursuing their claim in court.

I know some have claimed that the loser pays system passed by the House of Representatives is actually very moderate. Under the House-passed bill, plaintiffs in Federal court who reject a settlement offer, and then receive a lower award at trial, would be required to bear the opposing sides legal fees from the time of the settlement offer. Supporters of this provision—what they refer to as a ''modified'' English rule—maintain such fee shifting is necessary to deter frivolous lawsuits. In reality, such an amendment would have a much more detrimental effect. The amendment would also deter meritorious lawsuits by requiring a party prevailing on the merits to pay the losing side's attorney fees. Think about that for a minute. Under the bill passed by the House, a party who wins in court, who proves that the defendant

manufactured a dangerous product, engaged in employment discrimination, or was guilty of medical malpractice, could still be forced to pay the other side's legal fees. I believe it is bad public policy to allow wrongdoers to escape paying their own legal bills when they are proved on the merits in a court of law to be at fault.

I do not disagree that Congress should encourage parties to settle their claims. Certainly all Americans, including victims of unsafe products or medical malpractice, prefer a quick and certain resolution of their claims. That is why plaintiffs will, in all likelihood, accept settlements offers if they are just and reasonable. There is no need to impose draconian measures that greatly infringe on the ability of all individuals to access the courts. I cannot think of anything in the history of American jurisprudence that would support the enactment of such a provision, and I urge my colleagues in the Senate to reject this approach.

Nor do I support efforts to place arbitrary caps on noneconomic damages. The fact that noneconomic damages are difficult to precisely value does not mean that the losses in those areas are not real. Noneconomic damages compensate individuals for the things that they value most, the ability to have children, the ability to have your spouse or child alive to share in your life, the ability to look in the mirror without seeing a permanently disfigured face. If a company acts in a manner that robs people of these precious gifts, we should ensure that the injured party can recover fully for their loss through the jury system. We should not limit the ability to recover with an arbitrary cap.

In addition, I will oppose attempts to broaden this bill beyond the area of product liability. I know that a number of Senators have broader ''civil justice reform'' amendments, that would extend the provisions of this bill to every civil litigation claim filed in State court, or medical malpractice amendments. As I mentioned above, my support for product liability reform is based both on the constitutional power given Congress to regulate interstate commerce, and the need that has been demonstrated—after many years of study—for a uniform approach in the product liability area. The debate on civil justice reform and medical malpractice should be left for another day.

This is particularly true considering the wide-ranging implications that a number of proposed amendments would have on the enforcement of our Nation's civil rights and antidiscrimination laws. Enacting the broader ''civil justice reform'' bills that have been proposed could cause title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, or the reconstruction-era civil rights legislation to become ''toothless tigers.'' We must not stand by and let Congress repeal our Nation's civil rights protections under the guise of civil justice reform.

Finally, I would like to express my continued opposition to the FDA excuse, a provision that Senator DORGAN and I worked to remove last year. I am pleased that Senator ROCKEFELLER and GORTON did not include the FDA excuse in this year's bill.

Mr. President, as I stated at the outset, I do not oppose some product liability reform at the Federal level. Indeed, I am pleased to see Congress debating the standards that should apply in the product liability area, and I hope to work with Senators ROCKEFELLER and GORTON to craft moderate, bipartisan legislation. I believe the Product Liability Fairness Act that was reported out of the Commerce Committee strikes a reasonable balance between the need to preserve access to the courts, and the need to curb frivolous lawsuits.

That is not to say I believe this bill is perfect. I have a number of concerns with the legislation as currently drafted, concerns that I have raised with Senator ROCKEFELLER, and concerns that my staff has made clear to Senator ROCKEFELLER and Senator GORTON's staff. In the first instance, I would like to see the punitive damage provisions altered to accord equal treatment to noneconomic damages. Under S. 565 as currently drafted, punitive damages are limited to $250,000 or three times economic damages, whichever is greater. By excluding noneconomic damages from this calculation, the bill shortchanges the women who do not work outside the home, children, the elderly, and others who may not have large amounts of economic damages. While I support the notion of making punitive damages proportionate to the harm cased by the product—the goal that the punitive damage limitation is intended to accomplish—that harm should not be limited to out of pocket costs or lost wages. Noneconomic damages can often be difficult to calculate, but that does not make them any less real. As a notion of fundamental fairness, any congressional attempts to create a punitive damage standard should include both economic and noneconomic damages in its formula.

Nor do I feel the bill as currently drafted strikes the proper balance in the area of creating ''National, uniform standards,'' it will not completely level the playing field in all 50 States. If anything, I wish the current bill went farther in pre-empting State law in the product liability area. National standards should be just that; standards that apply in all 50 States. For example, if the Federal Government wishes to establish a 20-year statute of repose, that should be the statute of repose, States should not be allowed to establish a lower statute that will prevent consumers from suing after only 12 or 15 years. Again, I have raised this concern with Senator ROCKEFELLER, and I will continue to raise it in the coming days.

Yet while S. 565 is not perfect, it represents a good start. If this bill remains substantially the same, I intend to vote for cloture, as I stated very clearly on the floor of the Senate last year. It is not appropriate for the Senate to continue to filibuster an issue that clearly needs to be addressed. The current system is too slow. The transaction costs are too high. Given that our markets are now national and global in scope, Congress, which has authority over interstate commerce, has a responsibility to examine this problem.

The issue of product liability reform has been before the Senate for well over a decade now. I believe that everyone who is interested in our Civil Justice System should have come to the table and worked with the Commerce Committee, with Senators ROCKEFELLER and GORTON to address and resolve the underlying issues. If you do not feel this bill is the right one, submit a counterproposal. If you feel there are still changes that need to be made, put them forward.

But to simply refuse to even discuss the issue is, in my opinion, irresponsible. It is gridlock. It is not in the best interest of consumers, it is not in the interests of business men and women, it is not in the interests of employees, and it is not in the interest of our country.

I do want to caution, however, that my commitment to vote for cloture is limited to the bill as reported by the Senate Commerce Committee. I do not think that I am alone in that respect; indeed, I believe that the prospects of enacting a product liability bill will be vastly improved if the Senate rejects amendments to broaden the bill beyond its current scope, or to add the dangerous, anticonsumer provisions in the House legislation. If cloture is not able to be invoked, there will be many who will try to blame the democrats. In truth, however, if this bill does not clear the Senate, it will be because the majority on the other side of the aisle was more interested in making a political point than in making a law. It will be because they failed to keep the bill narrow enough and fair enough to command the supermajority necessary to move this bill to final passage.

So, Mr. President, in conclusion I would just say I hope in the ensuing weeks we will be able to debate, and I am sure we will debate in detail, the particular provisions of S. 565. But at this point, based on the legislation before us, I am prepared to support a vote for cloture so we can actually get on the legislation and get beyond filibuster. I yield the floor.

ORDERS FOR THURSDAY, APRIL 27, 1995

Mr. SANTORUM. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9:30 a.m. on Thursday, April 27, 1995; that following the prayer, the Journal of proceedings be deemed approved to